

AUG 05 2004

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 413
DATE RECEIVED: 06/02/2003
DATE ACTIVATED: 11/18/2003

EXPIRATION OF STATUTE OF
LIMITATIONS: 8/12/07¹

2004 AUG - 5 P 4: 25

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

SOURCE:

INTERNALLY GENERATED:
Birkett Wootton, Investigator
State of Arkansas Contractors Licensing Board

RESPONDENTS:

Community Water System, Inc.
Gill Elrod Ragon Owen & Sherman P.A.
Charles McLaughlin
Cora McLaughlin
Charles C. Owen
Luke Quinn
Heartsill Ragon III
Danny Roberson
Sharon Smith
Greg Smith
Chris Travis

**RELEVANT STATUTES
AND REGULATION:**

2 U.S.C. § 441b(a)
2 U.S.C. § 441f
11 C.F.R. § 110.4(b)(1)(iii)

INTERNAL REPORTS CHECKED:

Disclosure Reports and FEC Contributor Database

FEDERAL AGENCIES CHECKED:

None

¹ The principal violations alleged in the complaint appear to have occurred between 1998 and 2002. As discussed herein, there is some indication that there may have been reimbursed contributions in 2000 or even 1998. While we only make recommendations as to 2002 activity, for which the evidence is strongest, it is possible that the investigation will reveal earlier violations. See discussion *infra*.

I. INTRODUCTION

This matter, referred to the Commission by the State of Arkansas Contractors Licensing Board, alleges that Community Water System, Inc. ("CWS"), an Arkansas non-profit domestic corporation, through the activities of former CWS General Manager Greg Smith, reimbursed political contributions made by outside vendors of CWS to the campaigns of Senator Tim Hutchinson and Representative Marion Berry. For the reasons set forth in this Report, this Office recommends that the Commission find reason to believe that CWS knowingly and willfully violated 2 U.S.C. § 441b(a) by making corporate contributions, and that Greg Smith, an officer of CWS, also knowingly and willfully violated 2 U.S.C. § 441b(a) by consenting to the corporate contributions. This Office also recommends that the Commission find reason to believe that CWS knowingly and willfully violated 2 U.S.C. § 441f by making contributions in the names of others, and that Greg Smith knowingly and willfully violated 2 U.S.C. § 441f for assisting such contributions. *See* 11 C.F.R. § 110.4(b)(1)(iii). Further, this Office recommends that the Commission find reason to believe that Cora McLaughlin, Charles C. Owen, Luke Quinn, Danny Roberson, Sharon Smith, and Chris Travis violated, and Charles McLaughlin, Heartsill Ragon III and Gill Elrod Ragon Owen & Sherman P.A. ("Gill Law Firm") knowingly and willfully violated, 2 U.S.C. § 441f by acting as conduits for CWS's contributions.

2604415294

II. FACTUAL AND LEGAL ANALYSIS²

A. Shelly Davis' Memorandum and Related Information

Generally, the referral alleges that CWS may have reimbursed campaign contributions to two federal campaigns through company payments of inflated invoices, or other reimbursement vehicles, to conduits who were outside vendors to CWS. The referral identifies Shelly Davis, administrative assistant to former CWS General Manager Greg Smith, as the individual who brought the alleged activities to light. The referral enclosed a December 3, 2002 memorandum written by Ms. Davis to four CWS board members and a December 4, 2002 e-mail from Ms. Davis to "Barbara" that "explain many of the underlying allegations." Referral at 1.³

1. 1998

In her memorandum to the board members, Ms. Davis notes that she became aware of the alleged political contribution reimbursements in 1998:

² The facts relevant to these matters appear to have occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended ("the Act"), codified at 2 U.S.C. § 431 *et seq.*, or statements of law regarding provisions of the Act contained herein refer to the Act as it existed prior to the effective date of BCRA. Further, unless specifically noted to the contrary, any reference to Title 11 of the Code of Federal Regulations refers to the regulation as it existed prior to the implementation of BCRA, and as it appears in the 2002 edition of the Code of Federal Regulations.

³

That language appears to refer to CWS board members Barbara Sullivan, Pete Gist, and John Buster. In addition, this was not the first time Ms. Davis had apprised personnel of CWS of the alleged reimbursement scheme. Ms. Davis states in her memorandum that she had informed the CWS controller of the scheme in 2000 and apprised individual board members in August 2002. Attachment 1 at 1.

Attachment 1 at 1.⁵

2. 2000

Ms. Davis' memorandum further maintains that the reimbursement scheme continued in 2000. She states that Preston Bynum allegedly called Greg Smith again in order to set up a fundraiser for Congressman Berry in September. According to Ms. Davis, "Once again Greg made his phone calls and instructed the individuals to handle as before." *Id.* at 2.

Although Ms. Davis' memorandum refers generally to multiple individuals who were instructed to contribute with the expectation of reimbursement, she fully identifies by name only attorney Heartsill Ragon III of the Gill Law Firm, who provided legal services to CWS.⁶ The

⁴ According to published accounts, in 1998 CWS General Manager Greg Smith hired Preston Bynum, a recently released felon convicted of bribery and perjury charges, as a lobbyist to help CWS secure federal and state funding for the Lonoke-White Project. See Elisa Crouch, *Waterline Project Beset by Conflicts over Management*, The Arkansas Democrat Gazette, March 2, 2003. The Lonoke-White Project is a pipeline expected to pump water from Greers Ferry Lake to six water systems in Lonoke and White counties in Arkansas, reaching more than 16,000 customers. *Id.*

⁵ The attachments to the referral are not numbered and some appear more relevant than others. For the Commission's convenience, this Office has culled certain pages from the referral attachment and made them attachments to this Report.

⁶ According to Dun and Bradstreet reports, the Gill Law Firm has been incorporated since 1994. Heartsill Ragon III is listed as a Vice President of the firm.

1 referral includes an October 29, 2000 invoice, on Gill Law Firm letterhead, to CWS containing a
2 "miscellaneous" expense on October 11, 2000 in the amount of \$1,000. Attachment 2.⁷
3 According to Ms. Davis' memorandum, Greg Smith allegedly instructed CWS's controller to
4 refrain from paying the invoice until the expense was identified. A CWS employee accordingly
5 contacted the Gill Law Firm and was informed by Mr. Ragon that the "miscellaneous" expense
6 represented reimbursement of a political contribution. See Attachment 1 at 2. Mr. Ragon
7 reportedly also stated that Mr. Smith had instructed him to classify the political contribution
8 reimbursement as "miscellaneous." *Id.* The referral copy of the October 29, 2000 invoice has
9 handwritten notes appearing on the right side reportedly reading "Political contribution. Greg
10 told Heartsill to charge it."⁸ Attachment 2. Ms. Davis' memorandum states that "[t]hese
11 contributions are being made, the invoices submitted for payment. Greg approves them for
12 payment out of Federal Grant Funds and then he collects 3% of the expense."⁹ Attachment 1 at
13 2.

⁷ Ms. Davis' memorandum appears to state that the "miscellaneous" expense was \$2,000. However, the invoice is for only \$1,000. See Attachment 2.

⁸ Although the handwritten notes are not clearly visible, the CWS employee who contacted Mr. Ragon's office reportedly identified the handwriting as her own, and described the content of her notes in a press interview. See Elisa Crouch, *Waterline Project Beset by Conflicts over Management*, The Arkansas Democrat Gazette, March 2, 2003.

⁹ Elsewhere in Ms. Davis' memorandum, she alleges that Economic Development of Arkansas Fund Commission ("EDAFC") grant funds were used to pay fraudulent expenses. It is possible that EDAFC had a funding arrangement with the federal government, something that we will attempt to ascertain during our investigation. According to published reports, the EDAFC awarded funds to the Lonoke-White Project, see footnote 4, *supra*, which would in turn distribute funds to CWS. See Sonja Oliver, *CWS audit report*, Fairfield Bay News, March 12, 2003. CWS would acquire the EDAFC funds as a reimbursement for expenses paid by CWS's own operating funds. *Id.* Additionally, according to published reports, in 1999 Greg Smith formed Cenark Project Management Services Inc. ("Cenark"), a corporation that CWS hired to manage the Lonoke-White Project. *Id.* According to the terms of the contract between CWS and Cenark, Cenark received 3 % of the cost of the Lonoke-White Project as its fee for management services on behalf of CWS. *Id.* Therefore, if CWS reimbursed political contributions, and these were reflected as costs of the Lonoke-White Project, CWS would be reimbursed by grant funds and Cenark would receive 3% of the costs of the project.

Ms. Davis also makes an oblique reference to a second potential 2000 conduit, a "Charlie" whose "2000 contribution was delayed," which "caused him some problems." *Id.* We believe this may refer to Charles McLaughlin. Documents included with the referral reveal that Greg Smith addressed Charles McLaughlin by the nickname "Charlie" in e-mail correspondence regarding the making of political contributions, *see* Attachment 3, and Mr. McLaughlin made political contributions to Congressman Berry and others in 2000 and 2002. *See* discussion *infra*. Moreover, Mr. McLaughlin is identified by Dun and Bradstreet as the President of McLaughlin Engineering, Inc., a company that appears to have worked with CWS on matters concerning the Lonoke-White Project. *See* Elisa Crouch, *Waterline Project Beset by Conflicts over Management*, The Arkansas Democrat Gazette, March 2, 2003. Under these circumstances, we believe there is a permissible inference that "Charlie" is in fact Charles McLaughlin.¹⁰

3. 2002

According to Ms. Davis' memorandum, CWS engaged in additional political contribution reimbursement activity in 2002 in connection with an August 9, 2002 fundraiser for Congressman Berry and an August 15, 2002 fundraiser for Senator Hutchinson. Specifically, CWS allegedly reimbursed Heartsill Ragon III and "Charlie" (McLaughlin) for contributions made to the campaigns of Congressman Berry and Senator Hutchinson. Ms. Davis states that, owing to the delay in "Charlie" receiving reimbursement for his 2000 contribution, Mr. Smith requested that Mr. Ragon and "Charlie" send their invoices before the contributions were actually

¹⁰ The only other individual identified as "Charlie" in the referral documents is Charlie Troutman, the Lonoke County Judge in Arkansas. Although Judge Troutman is mentioned in an email correspondence from Shelly Davis to Greg Smith regarding attendance at a Congressman Berry 2002 fundraiser, a review of the FEC contributor database does not show any contributions made by this individual to the campaigns of Congressman Berry or Senator Hutchinson in 2000 or 2002. Further, there is no information to suggest that Judge Troutman was in a position to submit invoices to CWS for services related to the Lonoke-White Project as alleged by Shelly Davis. Thus, we do not believe that he is the "Charlie" at issue.

made:

See Attachment 1 at 2, 3.¹¹

The referral also includes a copy and a "corrected" copy of Gill Law Firm invoices dated July 29, 2002 and an invoice purportedly revised dated August 29, 2002. *See* Attachments 5, 6, and 7. The original July 29, 2002 invoice includes an entry for \$2,000 described as "miscellaneous reimbursements." Attachment 5. The "corrected" July 29, 2002 invoice reflects a change in the description of the \$2,000 in expenses from "miscellaneous reimbursements" to "series of intraoffice conferences re: various long-term planning, finance and operational issues." Attachment 6.¹² The August 29, 2002 invoice has an entry for 15.40 hours of legal services for "series of intraoffice conferences re: various long-term planning, finance and operational issues." Attachment 7.¹³ At an indicated rate of \$130 per hour, this entry represents a request by the Gill Law Firm for payment of \$2,002.

¹¹

¹² Although we do not know the actual date that the amended invoice was submitted, the written notes (author unknown) on the invoice suggest that CWS received it on October 2, 2002.

¹³ The referral documents do not include a prior August 2002 invoice with the entry "miscellaneous reimbursements."

1 According to Ms. Davis, Mr. Smith had directed Heartsill Ragon III to change the
2 descriptions in the invoices. In her memorandum, Ms. Davis recounts Mr. Smith's alleged
3 discussion with Mr. Ragon about revising the invoices:

4
5
6
7
8
9
10
11
12 Attachment 1 at 3.

13 Thereafter, Ms. Davis describes her efforts to gather additional evidence of the alleged
14 reimbursement scheme. Attachment 1 at 2. Ms. Davis states that while Mr. Smith was out of the
15 office, she e-mailed Mr. Ragon and requested that he refax the invoices to her and he did so.

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32 Ms. Davis eventually confronted Mr. Smith

1 regarding the alleged conduit contribution scheme, starting with the 1998 phone call with Preston
2 Bynum

3
4
5
6
7
8
9
10
11
12
13
14
15
16 It is possible that Ms. Davis' confrontation with Mr. Smith led him to contact the Gill
17 Law Firm concerning her allegations. The referral materials include a November 21, 2002
18 memorandum from Heartsill Ragon III to Greg Smith, which addresses the Gill Law Firm's
19 refund of \$4,002 in legal fees included in its July and August 2002 invoices, *see* Attachment 10,
20 and suggests that questions had been raised about the services noted in these invoices.

21 On December 16, 2002, shortly after Ms. Davis described the alleged reimbursement
22 scheme to four members of the CWS board, CWS reportedly dismissed Greg Smith and
23 terminated its working relationship with the Gill Law Firm, noting in a file memorandum that
24 Mr. Smith's activities on behalf of CWS appeared to involve illegal contributions to political
25 candidates and the falsification of records.¹⁵ Further, CWS board member Barbara Sullivan has

14 /

¹⁵ See Christine Weiss, *CWS memo cites 'illegal acts' leading to firing*, The Heber Springs Sun-Times, January 3, 2003. This memorandum was not included with the referral.

1 stated in press accounts that she expects the full scope of the reimbursement scheme to reach at
2 least \$20,000 in reimbursed contributions. *See Bert King, Water Chief Fired Due to Dereliction,*
3 *The Cabot Star Herald*, January 8, 2003. Both Mr. Smith and the Gill Law Firm reportedly have
4 maintained their innocence; Mr. Smith and CWS currently are embroiled in two separate lawsuits
5 (wrongful termination and breach of contract) growing out of the allegations in this matter.¹⁶

6 **B. Analysis of Potential Violations**

7 Because none of the proposed respondents have been notified yet or had an opportunity to
8 respond to the allegations, this analysis is limited to the information provided with the referral
9 and publicly available information. Although Ms. Davis alleges possible reimbursements in
10 1998, 2000, and 2002, the information obtained thus far with respect to 2002 activity represents
11 the most persuasive evidence of violations of the Act, and, following a discussion of the
12 applicable law, we will address that activity first.

13 **1. The Law**

14 The Act prohibits corporations from making contributions or expenditures from their
15 general treasury funds in connection with a federal election. 2 U.S.C. § 441b(a). In addition, this
16 section prohibits any officer or director of a corporation from consenting to any such contribution
17 or expenditure. *Id.* Section 441(b) also makes it unlawful for any candidate, political committee
18 or any other person knowingly to accept or receive corporate contributions.

¹⁶ *See Sonja Oliver, CWS board still facing lawsuits*, *The Heber Springs Sun-Times*, December 24, 2003. In February 2003, following Smith's termination, CWS dissolved its contract with Cenark. *See Michelle Hillen, Lawsuits fly: Fired utility chief, water system toe-to-toe*, *Pipeline conflict of interest cited*, *The Arkansas Democrat Gazette*, July 1, 2003. Mr. Smith apparently lost approximately \$1.3 million in Cenark fees due to the contract dissolution. *Id.* On December 23, 2003, citing breach of contract, Cenark sued CWS for "\$1 2 million-plus." *See Randy Kemp, Smith sues CWS for \$1 2 million*, *The Heber Springs Sun-Times*, January 30, 2004.

26044133002

1 The Act also provides that no person shall make a contribution in the name of another
2 person or knowingly permit his or her name to be used to effect such a contribution, and that no
3 person shall knowingly accept a contribution made by one person in the name of another person.
4 2 U.S.C. § 441f. In addition, no person may knowingly help or assist any person in making a
5 contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).¹⁷ This prohibition also applies
6 to persons or entities who provide money to others to effect contributions made in another's
7 name. 11 C.F.R. § 110.4(b)(2).

8 The Act penalizes more heavily violations that are knowing and willful. 2 U.S.C.
9 §§ 437g(a)(5)(B), (6)(c), and (d)(1). To be liable for a knowing and willful violation,
10 respondents must act with the knowledge that they are violating the law. *Federal Election*
11 *Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D.N.J. 1986).
12 An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme
13 for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir.
14 1990).

¹⁷ This regulation "applies to those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another . ." 54 Fed. Reg. 34,105 (1989) In *Central Bank of Denver v. First Interstate Bank of Denver, N A* , 511 U.S. 164 (1994), the Supreme Court held that private plaintiffs could not maintain an aiding and abetting action under § 10(b) of the Securities and Exchange Act of 1934 or Rule 10b-5 thereunder because the text of § 10(b) did not provide for aiding and abetting liability. This ruling, however, does not affect the validity of 11 C.F.R. § 110 4(b)(1)(iii), which arguably goes beyond the text of 2 U.S.C. § 441f in imposing liability for assisting in making contributions in the name of another. The *Central Bank* opinion did not address an agency's authority to promulgate prophylactic rules, which commonly enlarge the scope of the statute, indeed, the Court upheld the Security and Exchange Commission's authority to promulgate such a rule in a post-*Central Bank* decision. *US v O'Hagan*, 521 U.S 642, 673 (1997). Imposing liability on those who assist in making contributions in the name of another through 11 C F.R. § 110.4(b)(1)(iii) also serves a prophylactic purpose.

2. 2002

a. CWS, Greg Smith, and Gill Law Firm Attorneys

Ms. Davis' December 2002 memorandum and e-mail, supported by the other documents discussed above, describe a corporate reimbursement scheme during 2002 that, if proven, would constitute violations of 2 U.S.C. §§ 441b(a) and 441f by CWS through its agent, former General Manager Greg Smith. Under well-settled principles of agency law, actions by executive officers are imputed to the executive's company. *See Weeks v. United States*, 245 U.S. 618, 623 (1918). Mr. Smith held an executive position at CWS and apparently had authority to employ and commit to payment of outside vendors. Therefore, if CWS reimbursed political contributions in 2002 through the actions of Greg Smith, his 2 U.S.C. § 441f violations are imputed to CWS under an agency theory. As a corporation, CWS would also be liable for making prohibited contributions pursuant to 2 U.S.C. § 441b(a). Mr. Smith would also have personal liability under 2 U.S.C. § 441b(a) as a consenting corporate officer and under 2 U.S.C. § 441f for assisting a reimbursement scheme in 2002, if Ms. Davis' allegations are borne out.

FEC disclosure reports indicate that Gill Law Firm attorneys Heartsill Ragon III, Charles C. Owen and Chris Travis made contributions to Marion Berry for Congress and Tim Hutchinson for Senate in August 2002, collectively totaling \$4,000.¹⁸ These contributions are consistent with Ms. Davis' allegation that Greg Smith instructed Mr. Ragon on July 15, 2002 to submit invoices totaling \$4,000 for reimbursements of political contributions. Further, it appears that the Gill Law Firm's July and August 2002 invoices were the mechanisms by which the Gill Law Firm attorneys may have been reimbursed for their respective contributions. As discussed previously,

¹⁸ Mr. Ragon is reported as contributing \$1,000 to each committee; Mr. Travis is reported as contributing \$1,000 to the Berry committee; and Mr. Owen is reported as contributing \$1,000 to the Hutchinson committee.

1 the Gill Law Firm's original July 29, 2002 invoice, *see* Attachment 5, that describes a \$2,000
2 expense as "miscellaneous reimbursements" was allegedly "corrected," on Greg Smith's
3 instructions, to read "series of intraoffice conferences re: various long-term planning, finance and
4 operational issues." *See* Attachment 6. Although the Gill Law Firm August 29, 2002 invoice,
5 *see* Attachment 7, does not include a similar "miscellaneous reimbursements" entry, Ms. Davis'
6 memorandum suggests that a prior copy may have contained such language. *See* Attachment 1 at
7 3. The referral contains no information specifically naming either Mr. Travis or Mr. Owen, and
8 we have no other information that they were reimbursed for their contributions. However, the
9 timing of their contributions and the fact that the \$4,000 contributed by Gill Law Firm attorneys
10 matches the aggregate amount of the firm's invoices to CWS raise substantial questions about the
11 Travis and Owen contributions. Additionally, although CWS was the ultimate source of the
12 funds, the possibility that the Gill Law Firm received CWS funds in payment of the invoice into
13 its general corporate coffers and then disbursed the alleged reimbursements to the
14 aforementioned Gill Law Firm attorneys suggests that the Gill Law Firm, which was
15 incorporated, may have been a second-level conduit.

16 Further, CWS's activities following Ms. Davis' disclosures to its board, including the
17 dismissal of the Gill Law Firm and Mr. Smith, the latter reportedly based in part on his
18 involvement in illegal political contributions, *see* text accompanying footnote 15, *supra*, indicate
19 that the prohibited activity may have occurred. Therefore, there is reason to believe that CWS
20 and Greg Smith may have violated 2 U.S.C. §§ 441b(a) and 441f, and that Heartsill Ragon III
21 and the Gill Law Firm, and Chris Travis and Charles C. Owen may have violated 2 U.S.C.
22 § 441f.

b. Charles and Cora McLaughlin

As discussed previously, this Office believes that Charles McLaughlin is the "Charlie" named by Ms. Davis as another person that Greg Smith brought into the alleged scheme, although the possible reimbursement mechanisms are not precisely known at this time. *See* discussion *supra*. In 2002, Mr. McLaughlin and his wife, Cora McLaughlin, are reported as collectively making contributions totaling \$4,000. Mr. McLaughlin is reported as contributing \$1,000 each to the Berry committee, the Hutchinson committee, and on September 9, 2002, to the "Hutchinson and Arkansas Victory Committee," an apparent joint fundraising committee. Mrs. McLaughlin is reported as contributing \$1,000 to the Berry committee. These contributions are consistent with Ms. Davis' allegation that on July 15, 2002 Greg Smith requested "Charlie" to submit invoices to CWS for \$4,000. As such, there is reason to believe that Mr. and Mrs. McLaughlin both may have violated 2 U.S.C. § 441f by acting as conduits for political contributions in 2002.

c. Other Potential Conduits

CWS board member Barbara Sullivan has made statements to the media suggesting that the scope of the reimbursement scheme may exceed \$20,000 in reimbursed contributions. *See* discussion *supra*. Our review of the FEC contributor database indicates the alleged reimbursement scheme may have extended to other potential conduits making contributions to the Berry and Hutchinson campaigns in 2002. *See* Attachment 11.¹⁹ Luke Quinn,²⁰ Danny

¹⁹ For the Commission's convenience, Attachment 11 is a chart showing the contributions referenced in this Report by committee.

²⁰ Dun and Bradstreet reports identify Luke Quinn as the President of Quinn Companies, Inc., an entity that also may have been a participant in the Lonoke-White Project at the time the contributions at issue were made. *Id*

1 Roberson,²¹ and Sharon Smith (the spouse of Greg Smith), individuals with apparent ties to CWS
2 or CWS personnel, are reported as contributing \$1,000, \$500 and \$1,000, respectively, to the
3 Berry committee and again to the Hutchinson committee on the same dates as the Heartsill
4 Ragon III and Charles McLaughlin contributions. With the exception of Sharon Smith, the
5 referral materials contain the names of these individuals in connection with Mr. Smith's political
6 fundraising activities. *See* Attachment 12. As this Office plans to reach out to these contributors
7 to determine whether their contributions were reimbursed, and as such persons have potential
8 liability, the most prudent course is to find reason to believe that Luke Quinn, Danny Roberson,
9 and Sharon Smith may have violated 2 U.S.C. § 441f.²²

10 **3. 2000**

11 The information obtained to date regarding the alleged reimbursement scheme in 2000 is
12 not as persuasive as that pertaining to alleged 2002 reimbursement activity. In her memorandum,
13 Ms. Davis alleges that the Gill Law Firm's listing of a \$1,000 "miscellaneous" expense in its
14 October 29, 2000 invoice to CWS represented a political contribution, and that Greg Smith had
15 instructed Heartsill Ragon III to classify the reimbursed contribution as "miscellaneous." *See*
16 discussion *supra*. Similarly, press accounts report that Mr. Ragon's secretary informed a CWS
17 employee that Greg Smith had instructed Mr. Ragon to represent a reimbursed political

²¹ Dun and Bradstreet reports identify Danny Roberson as the owner of Roberson Land Surveying and Mapping, Inc., an entity that appears to have been a participant in the Lonoke-White Project at the time that the contributions at issue were made. *See* Attachment 12 at 5.

²² Generating such individuals as respondents at the First General Counsel Report stage is consistent with the Commission's actions in MUR 4931 (Audiovox) where the complaint in that matter did not name certain individuals but this Office's review of the FEC contributor database revealed a pattern of contributions by persons related to Audiovox.

2004412007

1 contribution as a “miscellaneous” expense.²³ However, Ms. Davis also appears to link the
2 reimbursement stemming from this invoice to a fundraising event for Marion Berry on or about
3 September 29, 2000. *See* Attachment 1, *supra*. But the FEC contributor database does not show
4 that Berry for Congress reported receiving any contributions made by Mr. Ragon or any other
5 Gill Law Firm employees in 2000. The only contribution in the database attributed to Mr. Ragon
6 in 2000 was a \$1,000 contribution to Dickey for Congress, received on March 31, 2000—nearly
7 seven months before the Gill Law Firm’s October 29, 2000 invoice to CWS. Such a gap in time
8 between the date that the contribution was made and the date that the Gill Law Firm allegedly
9 submitted a fraudulent invoice for reimbursement seems further at odds with Ms. Davis’ account.
10 Ms. Davis’ account, plus the October 2000 invoice, would seem to indicate that Mr. Ragon may
11 have been reimbursed by CWS for some contribution, but whether it was the Dickey
12 contribution, an unreported federal contribution, or a state or local contribution is entirely
13 unclear.

14 FEC disclosure reports reveal that as in 2002, there were clusters of contributions
15 reportedly received by political committees in 2000 from individuals with ties to CWS. Dickey
16 for Congress not only reportedly received Heartsill Ragon III’s March 31, 2000 contribution, but
17 also received contributions on the same date from Charles McLaughlin, Danny Roberson, Luke
18 Quinn, Greg Smith and Ernest Faucett,²⁴ who is named in the referral documents relating to

²³ Ms. Davis suggests in her memorandum that Mr. Ragon spoke to CWS employee Jennifer Fife directly, but Ms. Fife’s recollection, as reported in the press, was that she spoke to Mr. Ragon’s secretary. *See* Elisa Crouch, *Waterline Project Beset by Conflicts over Management*, The Arkansas Democrat Gazette, March 2, 2003. We plan to explore this discrepancy during discovery.

²⁴ The Arkansas Rural Water Association’s website identifies Ernest Faucett as its Chairman and notes his affiliation with the Arkansas Electric Cooperative Corporation. Publicly available sources identify Mr. Faucett as the Arkansas Electric Cooperative Corporation’s Vice President of Operations and Economic Development. It appears possible that Mr. Faucett held both positions simultaneously at the time that the contributions at issue were made.

1 fundraisers. See Attachment 12 at 6 and 9. On September 30, 2000, one day after the Berry
2 fundraiser noted in Ms. Davis' memorandum, Berry for Congress reportedly received
3 contributions from Luke Quinn, Charles McLaughlin, Danny Roberson, Sharon Smith and from
4 Joseph Park,²⁵ who is also mentioned in the referral materials in connection with Mr. Smith's
5 2000 political fundraising activities. See Attachment 12 at 6. Hutchinson for Senate also
6 reportedly received contributions on December 8, 2000 from Ernest Faucett, Joseph Park and
7 Ann Bynum, former CWS lobbyist Preston Bynum's wife. However, given that Ms. Davis
8 appears only to make allegations regarding contributions made in 2000 to Berry for Congress,
9 and the need to clarify the facts surrounding the Gill Law Firm's October 2000 invoice, this
10 Office makes no recommendations at this time with respect to the 2000 contributions. As we
11 would in any event, we intend to inquire of witnesses who have information about the 2002
12 contributions whether they are aware of any other contributions reimbursed by CWS at any time.
13 Should this Office obtain evidence indicating that any 2000 contributions violated the Act, this
14 Office will make appropriate recommendations at a later time.

15 In addition to his possible participation in a reimbursement scheme in 2000, Mr. Smith
16 may have directly used CWS funds to pay for at least one fundraising event in that year.
17 Specifically, according to press reports, on September 29, 2000, Mr. Smith used a CWS credit
18 card to pay for \$165.13 in meals for a Congressman Berry fundraiser. See Elisa Crouch,
19 *Waterline Project Beset by Conflicts over Management*, The Arkansas Democrat Gazette,
20 March 2, 2003. Mr. Smith reportedly then used money from the Lonoke-White project to
21

²⁵ Joseph Park reportedly was the Chief Executive Officer of Community Bank of Cabot ("Bank of Cabot") at the time that he made the contribution at issue. See David Smith, *River lot developer sues bank in Cabot Finance agreements unfulfilled, suit says*, The Arkansas Democrat Gazette, May 28, 2003.

1 reimburse CWS's operating fund, which paid the credit card bill. *Id.* See footnote 9, *supra*. If
2 these facts are true, CWS made a prohibited corporate in-kind contribution to the Berry
3 campaign, to which Mr. Smith consented, in violation of 2 U.S.C. § 441b(a).²⁶

4 4. 1998

5 This Office has not been able to locate any suspicious pattern of federal contributions in
6 1998 involving the individuals noted in this matter. It is possible that even if Ms. Davis
7 overheard the conversation she relates as occurring in the fall of 1998, no contributions were
8 made to effectuate the plan, or any reimbursed contributions went to state or local candidates, or
9 federal contributions were made by conduit contributors of whom we are not yet aware. If the
10 Commission proceeds in this matter, we intend to explore the genesis and scope of the alleged
11 reimbursement scheme.²⁷

12 5. Knowing and Willful Activity

13 As discussed *supra*, knowing and willful activity can be shown by an elaborate scheme to
14 disguise corporate political contributions. See *United States v. Hopkins*, 916 F.2d 207, 214-15
15 (5th Cir. 1990). Ms. Davis alleges that Greg Smith instructed Heartsill Ragon III and Charles
16 McLaughlin to submit false invoices to CWS to reimburse them for making contributions to

²⁶ Although CWS may receive federal grants for its water pipeline projects, this Office has not located any public information indicating that CWS is a federal contractor with potential liability pursuant to 2 U.S.C. § 441c. See 2 U.S.C. § 441c (defines federal contractor as an entity which "enters into any contract with the United States for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof" and which receives payment for such services from funds appropriated in whole or part by Congress). See also Advisory Opinion 1993-12 (notes that there are distinctions between grants and contracts to the extent that grants that typify public purpose activity do not fall under the regulatory description of a contract for purposes of 2 U.S.C. § 441c).

²⁷ Given that this Office has yet to locate any suspicious pattern of federal contributions in 1998, and Ms. Davis' allegations regarding Mr. Bynum appear to focus specifically on his activities in 1998, this Office makes no recommendations against him at this time. Should this Office obtain evidence indicating that Mr. Bynum was involved in the alleged reimbursement scheme, this Office will make appropriate recommendations at a later time.

1 federal candidates, and that they did so. This allegation, if proven, would represent an elaborate
2 scheme to disguise corporate reimbursements of political contributions. As such, there is reason
3 to believe that Greg Smith, Heartsill Ragon III and Charles McLaughlin acted knowingly and
4 willfully. In addition, there is reason to believe that both CWS and the Gill Law Firm, through
5 the actions of Greg Smith and Heartsill Ragon III, respectively, have derivative knowing and
6 willful liability.²⁸

7 However, this Office does not recommend knowing and willful findings at this time
8 against Gill Law Firm attorneys Chris Travis and Charles Owen, or against Cora McLaughlin,
9 Luke Quinn, Danny Roberson, and Sharon Smith for possibly permitting their names to be used
10 to effect contributions in the name of another during 2002. Should this Office obtain evidence
11 indicating that the actions of any of these individuals noted above were knowing and willful, this
12 Office will make appropriate recommendations at a later time.

²⁸ In recent cases involving allegations of 2 U.S.C. §§ 441b(a) and 441f violations on agency theories, the Commission has deferred knowing and willful findings at the reason to believe stage against corporate respondents that brought the possible violations to the Commission's attention and shared the results of their internal investigations. *See* MUR 5187 (Mattel, Inc.). In contrast, at the reason to believe stage, the Commission has made knowing and willful findings for 2 U.S.C. §§ 441b(a) and 441f violations against corporate respondents not making *sua sponte* submissions. *See* MUR 5375 (Laidlaw) and MUR 4931 (Audiovox). Here, although the CWS board has known about the alleged reimbursement scheme since 2002, the corporation has never contacted the Commission concerning the possibility of FECA violations.

Moreover, in recent cases, the Commission has made knowing and willful findings at the reason to believe stage against respondents whose actions fit the description of a second-level conduit. In MUR 5187 (Mattel, Inc.), the Commission made knowing and willful §441f findings against AMS, where its invoices were the mechanism by which individuals were reimbursed by Mattel for political contributions. The Commission made the same findings in MUR 4818 (Roberts for Congress) against Charlene Spears, where she received funds from Gene Stipe to reimburse straw contributors. With respect to knowing and willful reason to believe findings in the law firm context, the Commission made such findings against the Stipe Law Firm in MUR 4818 (Roberts for Congress), where it appeared that the firm's funds might have been used to reimburse political contributions by firm employees. *Contrast* MUR 5092 (Lazaroff) (Commission exercised prosecutorial discretion and did not pursue law firm where the partner reimbursed political contributions with his own funds). Here, while the Gill Law Firm does not appear to have been the ultimate source of funds, the reimbursement funds appear to have flowed through it to Ragon and other firm attorneys inasmuch as inflated firm invoices appear to have been the reimbursement mechanism. Thus, it is appropriate at this stage to impute Ragon's willful conduct to the firm, of which Mr. Ragon was an officer and an agent.

1 Thus far no information has been provided that indicates that the recipient campaign
2 committees, Marion Berry for Congress, Hutchinson for Senate, Hutchinson and Arkansas
3 Victory committee, or Dickey for Congress, were aware that they may have received prohibited
4 contributions. Therefore, this Office makes no recommendations at this time with respect to
5 these recipient campaign committees. Should this Office obtain evidence indicating that any of
6 these committees violated the Act, this Office will make appropriate recommendations at a later
7 time.

8 **III. PROPOSED DISCOVERY**

26044133012

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that Community Water System, Inc. knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.
3. Find reason to believe that Greg Smith knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.
4. Find reason to believe that Charles McLaughlin knowingly and willfully violated 2 U.S.C. § 441f.
5. Find reason to believe that Heartsill Ragon III knowingly and willfully violated 2 U.S.C. § 441f.
6. Find reason to believe that Gill Elrod Ragon Owen & Sherman P.A. knowingly and willfully violated 2 U.S.C. § 441f.
7. Find reason to believe that Cora McLaughlin violated 2 U.S.C. § 441f.
8. Find reason to believe that Charles C. Owen violated 2 U.S.C. § 441f.
9. Find reason to believe that Luke Quinn violated 2 U.S.C. § 441f.
10. Find reason to believe that Danny Roberson violated 2 U.S.C. § 441f.
11. Find reason to believe that Sharon Smith violated 2 U.S.C. § 441f.
12. Find reason to believe that Chris Travis violated 2 U.S.C. § 441f.
13. Approve the appropriate Factual and Legal Analyses.
- 14.

15. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

8/5/04
Date

BY: Rhonda J. Vordingh by LLC
Rhonda J. Vordingh
Associate General Counsel
for Enforcement

Susan L. Lebeaux / Mr.
Susan L. Lebeaux
Assistant General Counsel

Roy Q. Luckett
Roy Q. Luckett
Attorney

Attachments:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
11. Chart of contributions made by individuals with ties to CWS.
- 12.

Pre-MUR 413
Contributor Information

NAME	EMPLOYER	CONNECTION	COMMITTEE	DATE	AMOUNT
Park, Joe	Community Bank	Noted in referral docs-9/29/00 Greg Smith memo President, Community Bank of Cabot	Berry for Congress	9/30/00	\$ 1,000.00
Quinn, Luke	Real Estate	Noted in referral docs-7/18/02 Greg Smith e-mail to Luke Quinn regarding contributions	Berry for Congress	9/30/00	\$ 1,000.00
McLaughlin, Charlie	Self employed	Noted in referral docs-7/18/02 Greg Smith e-mail to Luke Quinn regarding contributions	Berry for Congress	9/30/00	\$ 1,000.00
Roberson, Danny	Self employed	Noted in referral docs-9/29/00 Greg Smith memo	Berry for Congress	9/30/00	\$ 500.00
Smith, Sharon		Noted in referral docs-9/29/00 Greg Smith memo	Berry for Congress	9/30/00	\$ 1,000.00
Ragon III, Heartsill	Gill Law Firm	Noted in referral docs-9/29/00 Greg Smith memo	Berry for Congress	8/12/02	\$ 1,000.00
Travis, Chris	Gill Law Firm	Atty Gill Law Firm	Berry for Congress	8/12/02	\$ 1,000.00
McLaughlin, Cora	Hairlink	Wife of Charles McLaughlin	Berry for Congress	8/12/02	\$ 1,000.00
Quinn, Luke	Real Estate	Noted in referral docs-9/29/00 Greg Smith memo	Berry for Congress	8/12/02	\$ 1,000.00
McLaughlin, Charlie	Self employed	Noted in referral docs-9/29/00 Greg Smith memo	Berry for Congress	8/12/02	\$ 1,000.00
Roberson, Danny	Self employed	Noted in referral docs-9/29/00 Greg Smith memo	Berry for Congress	8/12/02	\$ 500.00
Smith, Sharon		Noted in referral docs-9/29/00 Greg Smith memo	Berry for Congress	8/12/02	\$ 1,000.00
			Total		\$11,000.00
		Noted in referral docs-9/29/00 Greg Smith memo			
Faucett, Ernie	AR Rural Water Assoc	Chairman AK Rural Water Assn. And VP of AK Electric COOP Corp.	Dickey for Congress	3/31/00	\$ 250.00
Ragon III, Heartsill	Gill Law Firm	Atty Gill Law Firm	Dickey for Congress	3/31/00	\$ 1,000.00
McLaughlin, Charlie	Self employed	L-W Project Engineer	Dickey for Congress	3/31/00	\$ 1,000.00
McLaughlin, Charlie	Self employed	L-W Project Engineer	Dickey for Congress	3/31/00	\$ 1,000.00
Roberson, Danny	Self employed	Noted in referral docs-7/18/02 Greg Smith e-mail to Luke Quinn regarding contributions	Dickey for Congress	3/31/00	\$ 250.00
Quinn, Luke	Self employed	Noted in referral docs-7/18/02 Greg Smith e-mail to Luke Quinn regarding contributions	Dickey for Congress	4/12/00	\$ 350.00

NAME	EMPLOYER	CONNECTION	COMMITTEE	DATE	AMOUNT
Smith, Greg	CWS	GM CWS	Dickey for Congress	3/31/00	\$ 350.00
			Total		\$ 4,200.00
Park, Joe	Community Bank	Noted in referral docs-9/29/00 Greg Smith memo	Hutchinson for Senate	12/8/00	\$ 1,000.00
Bynum, Ann		Wife of Preston Bynum	Hutchinson for Senate	12/8/00	\$ 500.00
Faucett, Ernie		Noted in referral docs-9/29/00 Greg Smith memo	Hutchinson for Senate	12/8/00	\$ 250.00
Owen, Charles C	Gill Law Firm	Atty Gill Law Firm	Hutchinson for Senate	8/30/02	\$ 1,000.00
Quinn, Luke	Real Estate	Noted in referral docs-9/29/00 Greg Smith memo	Hutchinson for Senate	8/30/02	\$ 1,000.00
McLaughlin, Charlie	Self employed	Noted in referral docs-9/29/00 Greg Smith memo	Hutchinson for Senate	8/30/02	\$ 1,000.00
Roberson, Danny	Self employed	Noted in referral docs-9/29/00 Greg Smith memo	Hutchinson for Senate	8/30/02	\$ 500.00
Smith, Sharon		Noted in referral docs-9/29/00 Greg Smith memo	Hutchinson for Senate	8/30/02	\$ 1,000.00
Ragon III, Heartsill	Gill, Elrod, Ragon	Atty Gill Law Firm	Hutchinson for Senate	8/30/02	\$ 1,000.00
			Total		\$ 7,250.00
McLaughlin, Charlie	Self employed	Noted in referral docs-9/29/00 Greg Smith memo	Hutchinson & AR Victory Cmte	9/9/02	\$ 1,000.00
			Grand Total		\$23,450.00